

## § 11.11

## 29 CFR Subtitle A (7-1-04 Edition)

### § 11.11 Development of environmental analyses and documents.

(a) Potential environmental effects of agency actions shall begin to be examined at the time a topic for potential action is submitted to the agency staff for research, proposal development, or other consideration. During this stage the agency shall determine whether the type of action which may be proposed may be categorically excluded from NEPA environmental analysis requirements pursuant to § 11.10. If the type of action being considered is not categorically excluded, or is an extraordinary case of a normally excluded action which may have significant environmental impacts, development of the information needed to make an environmental assessment shall begin. Actions described in § 11.10(b) shall be submitted to the Assistant Secretary for Administration and Management at this point, pursuant to applicable Departmental procedures, for appropriate review, including a determination with respect to whether or not the action is located in or near a floodplain or wetlands area in connection with the requirements of Executive Orders 11988 and 11990.

(b) When information gathered during the early stages of proposal development indicates that preparation of an environmental impact statement will be required, the agency shall begin preparation of such a document by initiating the scoping process in accordance with 40 CFR 1501.7. However, if the information is not clearly indicative of the need for preparation of an environmental impact statement, an environmental assessment shall be prepared.

(c) Agencies are encouraged, in developing environmental assessments, to explore all factors which it may become necessary to examine should it be determined that preparation of an environmental impact statement is necessary, even though some of those factors, such as economic and social effects, "are not intended by themselves to require preparation of an environmental impact statement" (40 CFR 1508.14). Thus in making environmental assessments of real property actions described in § 11.10(b), agencies are encouraged to consider the following factors, among others:

(1) The nature and degree of any former use of a proposed facility and the number of individuals the facility formerly served, as compared with its use and population to be served under the new proposal;

(2) The population of the area (numbers, density and makeup);

(3) Community facilities and services, taking into consideration capacity and present and former use, including: Health services (hospitals, physicians), business and community development policy, recreational facilities (parks, theaters), fire and police protection, schools, energy resources, waste disposal, water, traffic and roadway systems, sewage systems, communications, and public transportation;

(4) The proximity of the facility to residential areas;

(5) The potential impact on the quality of drinking water, air quality, noise levels, designated scenic areas, land use, soil quality (including drainage or erosion problems), buildings valued for their design or which are otherwise locally significant, the listing or eligibility for listing of a site in the National Register for Historic places, consistent with the requirements of 20 CFR 684.24a where applicable, neighborhood character, and health and safety of residents;

(6) The potential impact on natural systems and resources including rivers and streams, forests, wetlands, floodplains, wilderness areas or places, and species designated for preservation, including species of plants and animals and their critical habitats as identified in regulations published by the Secretary of the Interior (50 CFR chapter I, part 17), and by the Secretary of Commerce (50 CFR chapter II, parts 217, 222.23, 223, and 227.4); and

(7) Other considerations appropriate in light of the nature and size of the project.

(d) If an agency determines, on the basis of an environmental assessment, that preparation of an environmental impact statement is not required, notice of a finding of no significant impact and the availability of the environmental assessment shall be prepared and published in the FEDERAL REGISTER. In the case of proposed rule-making, the notice of a finding of no

significant impact may be published in the FEDERAL REGISTER at any time prior to the publication of the proposed action, or it may be included in the FEDERAL REGISTER notice of proposed rulemaking. Issuance of a finding of no significant impact at the proposal stage of rulemaking shall not foreclose further consideration of environmental issues during the rulemaking proceedings. Therefore the Department of Labor notes that, consistent with 40 CFR 1500.3, the finding shall not be considered final until promulgation of the rule involved (the action affecting the environment).

(1) If it is determined that preparation of an environmental impact statement is not required for an action, but that action is one which would normally require the preparation of an environmental impact statement, an action closely similar to one which would normally require the preparation of an environmental impact statement, or an action without precedent in this regard, the agency shall make a preliminary finding of no significant impact available for public review and comment. In accordance with 40 CFR 1501.4(e)(2), this finding shall be made available for at least 30 days before a final determination is made as to whether an environmental impact statement will be prepared, and before any public record may be closed and the proposed action may become effective.

(2) Although not required by 40 CFR 1501.4(e)(2), an agency may use the procedure described in § 11.11(d)(1) whenever the agency determines it to be appropriate.

(e) If it is determined on the basis of an environmental assessment, prepared in connection with an action described in § 11.10(b), that preparation of an environmental impact statement is required, or that public review is required in connection with actions in floodplains or wetlands that do not require environmental impact statements under E.O. 11988 or E.O. 11990, the agency shall consider altering the proposed action or changing the site of the proposed project, and shall proceed with preparation of an environmental impact statement or appropriate public review actions only after obtaining

written authorization from the Assistant Secretary for Administration and Management.

(f) Filing of any draft environmental impact statement with the Environmental Protection Agency (EPA), pursuant to 40 CFR 1506.9, and circulation to the public, will ordinarily coincide with publication of the proposed agency action, which is the subject of that document, in the FEDERAL REGISTER. In any event, the statement will be made available for public comment for at least a 45-day period.

(g) The final decision on the proposed action shall be made not earlier than 90 days following publication of EPA's notice of the filing of the draft environmental impact statement, and, except as provided below, not earlier than 30 days following publication of EPA's notice of the filing of the final environmental impact statement.

(1) In accordance with 40 CFR 1506.10, an agency engaged in rulemaking under the Administrative Procedure Act or other statute, for the purpose of protecting the public health or safety, may waive the 30-day time period noted above and publish a decision on a final rule simultaneously with publication of the notice of the availability of the final environmental impact statement. Therefore, Departmental agencies (such as OSHA and MSHA) meeting these requirements, may file and circulate the final environmental impact statement at the same time a notice of decision is being published, provided that the final rule or action may not become effective for at least 30 days from the date of publication of the EPA's notice of filing of the final environmental impact statement.

(2) If a supplement to a final environmental impact statement is prepared, it shall be incorporated into the rulemaking record. If the supplement is prepared following the close of the rulemaking record and is based on, or introduces, new data or major new alternatives or analyses, the rulemaking record will be reopened for at least 30 days to receive public comments. The final action may not become effective for at least 30 days following EPA publication of the filing of the supplemental statement.

## § 11.12

(h) In accordance with 40 CFR 1505.2, when an agency prepares a final environmental impact statement, the agency shall prepare a concise public record of decision detailing what the decision was, what alternatives were considered (specifying the environmentally preferable alternative), how those considerations entered into the decision, and whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, the reason they were not. This record may be contained in, or integrated with, the preamble to the FEDERAL REGISTER notice of final action or in any other public document considered appropriate by the agency.

### § 11.12 Content and format of environmental documents.

(a) An environmental assessment may be prepared in any format considered effective by the agency involved. When such a document is prepared in connection with a proposed action, it must be made readily available to the public either by placement into the public record (with public notice provided in accordance with 40 CFR part 1506) or by publication in the FEDERAL REGISTER. The preamble to the FEDERAL REGISTER notice of proposed rulemaking may be considered the environmental assessment provided that the document contains the elements required by 40 CFR 1508.9(b).

(b) A finding of no significant impact (40 CFR 1508.13) may be prepared in any format considered to be effective or necessary by the agency involved in the proposed action.

(c) The finding of no significant impact, and the environmental assessment on which it was based, as well as any comments received in response to these documents shall be included in the public record of the proposed action.

(d) Department of Labor agencies shall comply with the format requirements for environmental impact statements as set forth at 40 CFR 1502.10, except when an agency determines that there is a compelling reason to do otherwise, such as more effective communication or reduced duplication of effort and paperwork (40 CFR 1506.4). For example, in OSHA/MSHA informal

## 29 CFR Subtitle A (7-1-04 Edition)

rulemaking proceedings, environmental documents may be combined with the FEDERAL REGISTER notice of proposed or final rulemaking. Filing and circulation of the combined preamble/environmental document shall be in accordance with the requirements of 40 CFR 1506.9.

(e) The final environmental impact statement shall contain any changes in information or supplemental information received since the filing and circulation of the draft environmental impact statement, as well as a summary, or copies of the substantive comments received in response to the draft environmental impact statement. If such changes and comments are minor, an agency may circulate only the changes and comments, including responses to the comments, rather than the entire impact statement, to the extent permitted by 40 CFR 1502.19. However, the entire document, with a new cover sheet, shall be filed with EPA and placed in the rulemaking record.

### § 11.13 Public participation.

(a) When an agency has determined that preparation of an environmental impact statement is required, the agency shall publish a notice of intent to prepare an environmental impact statement in the FEDERAL REGISTER and shall invite public participation in the agency's scoping process as required by 40 CFR 1501.7.

(b) When the draft environmental impact statement has been prepared and filed with the EPA pursuant to § 11.11(f), comments on the document shall be solicited from appropriate Federal, State and local agencies, Indian tribes, and other persons or organizations who may be interested or affected, as required by 40 CFR 1503.1.

(c) In the case of an action with effects primarily of local concern, agencies shall consider the use of clearinghouses, newspapers and other public media likely to generate local participation in the agency process as ways of supplementing the notices otherwise specified in this part. The use of such public media does not, however, require or authorize the use of paid advertising.